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Supreme Court of the United States

OCTOBER TERM, 1932

No. 492

THE PEOPLE OF PUERTO RICO, *Petitioner*,

v.

RUSSELL & CO., *Sucrs., S en C.*, HORACE HAVEMEYER, FRANK A. DILLINGHAM, ET AL., *Respondents*.

PETITIONER'S REPLY BRIEF

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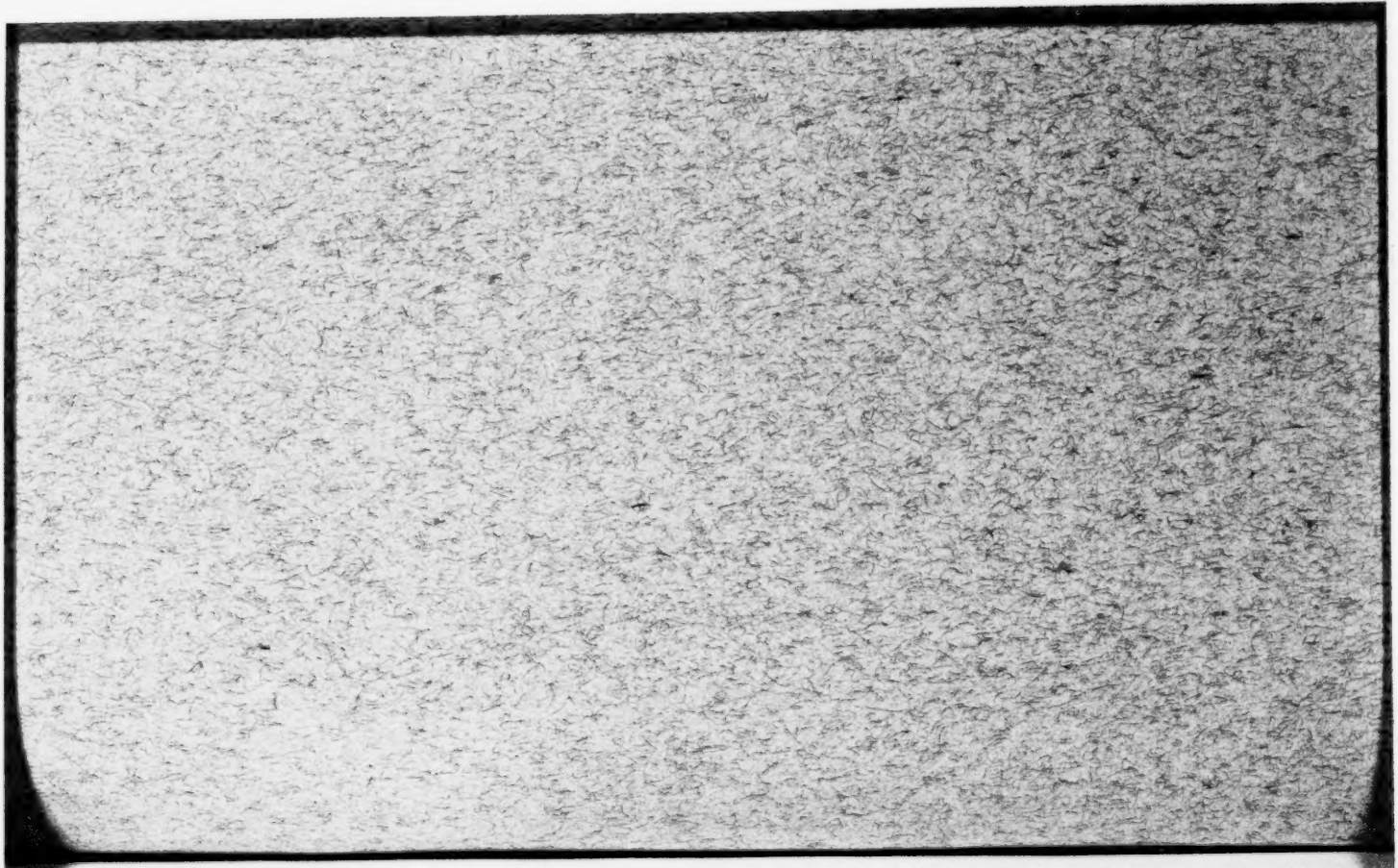

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PETITIONER'S REPLY BRIEF [1]

INTRODUCTION

Petitioner elected to treat its original petition and supporting brief as its opening brief upon the argument of this case. Respondents having elected to supplement their original brief in opposition to the petition by their further "Brief for Respondents" filed since the granting of the writ, petitioner submits this reply.

FACTS

The "Brief for Respondents" contains erroneous allegations of fact; some in direct conflict with the "agreed statement of facts"; others predicated on illogical and unwarranted infer-

[1] In the Petition for Certiorari and Supporting Brief, the references to pages in the Record were to the transcript of the record as printed in the Circuit Court of Appeals and filed here (10 copies) with the Petition for Certiorari. Those page numbers now appear as *folios* "(*fol.*)" in the Record as now reprinted by the clerk of this court. In this reply brief, references are to the pages of the Record as now reprinted in this Court.

ences; and still others naked assertions without support in the record.

(1) Under the heading "Historical Statement," on page 4 of respondents' brief, it is said that the "avowed purpose" of Puerto Rican Act No. 49 of 1921 is "to compel the respondents to pay a special tax for the water which they receive by way of exchange under the contract with the Government of Puerto Rico as is shown by the first section of the law," etc. A similar statement is on page 35, only differing in that in the latter instance the word "stated" is used in place of "avowed."

These statements are clearly incorrect. Section 1 of Act No. 49, quoted in respondents' brief immediately following the first of the statements in question (p. 4) does not even mention the respondents, much less openly declare or express any purpose whatever with relation to them. It does expressly levy, and therefore might be said to avow or state a purpose to compel payment of a special tax on all lands of a prescribed class, to-wit: lands "which for irrigation purposes are supplied with water from the southern coast public irrigation system * * * but which under the present Irrigation Law in no way contribute to the payment of expenses for the maintenance of said system." It is true that the lands of the respondent *sociedad* fall within that class, and therefore it might not be too wide a stretch of the words to say that the avowed or stated purpose of the Act is to compel the respondent *sociedad*, with other holders of lands within the prescribed class, to pay the special tax imposed. But that is as far as the "avowed," or openly declared, purpose of the Act can be said to extend.

As to the detailed nature of the benefits for which the prescribed assessments are imposed, the Act is silent, and recourse must be had to reasonable interpretation. Because the Act is one imposing special assessments; because such assessments can be validly imposed only to the extent of benefits derived from some public improvement; and because the Act specifically mentions the southern coast public irrigation

system, defines the class of lands to be assessed as certain of those irrigated from that system, and measures the assessments imposed by the cost of operating and maintaining that system; it follows by necessary implication that the benefits for which the assessments are imposed are those derived by the specified lands from the operation and maintenance of that system.

It does not follow by similar implication that the benefits for which the assessments are imposed consist solely of the waters delivered from the system, or even that those waters were necessarily included at all among the benefits for which the assessments are imposed. A plantation located within the geographical limits of the district, and irrigated from the system, might benefit in many ways other than by the single advantage of itself receiving water from the system. The irrigation of other lands generally throughout the district might reasonably be expected to result in local improvement of roads and communications; betterment of rail, port and other facilities for the marketing of products at home and abroad; increase in local population with better housing and sanitation, with consequent improvement in the local supply of farm labor; and many other conceivable advantages; all tending to enhance the values of, and otherwise specially to benefit lands irrigated from the system, and located within the geographical limits of the district, whether originally included as an organic part of the district or not.

Accordingly respondents are quite in error in saying in their brief that the "avowed" or "stated" purpose of the Act "is to compel the respondents to pay a special tax *for the water which they receive.*" Certainly no such purpose is avowed or stated, and none such is even necessarily inferable.

(2) On page 6 of their brief, under the heading "Statement of Facts," respondents allege that they are co-partners doing business under the firm name and style of Russell & Company, Sucesores, S. en C.

This allegation might be taken to imply that the individual

respondents constitute a general partnership, whereas they constitute (Par. 2, Agreed Statement, R. 60), as the letters "S. en C." in its name show (Art. 146, Code of Commerce, Petitioner's Supporting Brief, p. 81), what is called in Spanish a *"sociedad en comandita."*

(3) On page 6 of respondents' brief, immediately following the allegation last above noted, it is alleged that "The partners own four tracts of land," etc., and that "They sublease * * * two other tracts of land," etc.

Although the agreed statement refers in paragraph 4 to the "defendants" as the owners of four of the tracts (R. 60), and in paragraph 14 to "defendants' predecessors in title" as lessees of the other two tracts involved (R. 64), in paragraph 23 of the same statement it is agreed that it is the "defendant partnership,"—the defendant Russell & Co., Sucesores, S. en C., a *sociedad en comandita* (Par. 2, Agreed Statement, R. 60), as the letters *"S. en C."* in its name indicate),—that is liable for the assessments if the act is valid (R. 67), showing that the prior references to the individual "defendants" last above mentioned were intended as references to the so-called partnership or *sociedad*, and that it is the latter which owns and leases the lands in question, and not the so-called "partners."

(4) On page 14 of respondents' brief, still under the heading "Statement of Facts," referring to Act No. 49 of 1921, it is alleged that the purpose thereof "was to set at naught the contract between the People of Porto Rico and respondents' predecessor in title * * * and to nullify the old Spanish concessions * * * by making the respondents pay a special tax for the construction, maintenance and operation of the irrigation system," etc.

This amounts merely to a statement of respondents' contention that the Act impairs the obligations of the contracts. It is the assertion of a conclusion of law, not of fact. In so far as it implies that the assessments imposed by the Act are in part "for the construction," as well as for the maintenance

and operation of the irrigation system, it is erroneous, because the Act of 1921 omits any mention of construction, or amortization of the cost of construction, and expressly prescribes "the cost of operations and maintenance of the irrigation system during the following fiscal year" as the basis for computation of each annual assessment (Sec. 2, Act of 1921, App. I to the Petition and Supporting Brief, p. 58).

(5) On page 15 of respondents' brief, and as part of their "Statement of Facts," again referring to the Act of 1921, it is alleged that "the Government sought by the law nevertheless to compel them to pay as those others paid who had their concessions condemned or valued by agreement."

This amounts to an allegation that there is no difference between the rate of assessment under the Act of 1921, and that under the Act of 1908 as amended by the Act of 1913. But there is in fact a very substantial difference. As above pointed out, assessments under the Act of 1921 include nothing whatever for construction, being expressly limited to operation and maintenance alone (*supra*, p. 4), while section 11 of the Act of 1913 expressly provides for inclusion of the "interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year" (Petition and Supporting Brief, App. III, p. 69). It will thus be seen that the owners of lands whose prior water rights were only suspended in exchange for equivalent deliveries of water from the system, such as the respondent *sociedad* in the present case, *are not*, as alleged by respondents, *compelled* by the Act of 1921 *"to pay as those others paid who had had their concessions condemned or valued by agreement,"* but enjoy a substantially lower rate of assessment, including *nothing whatever either for new construction or for amortization of the cost of prior construction.*

(6) Again on page 15 of respondents' brief, immediately following the statement last above discussed, it is alleged in substance that the Guayabal Dam and Reservoir could never have been put into operation without the consent of "owners of land having prior concessions recognized as valid," mean-

ing, no doubt, among others, the respondent *sociedad*, or its predecessors.

As petitioner has pointed out in the Supporting Brief (pp. 41-42), this finds no support in the record. True the unextinguished concession holders would have had a right to take certain amounts of water from the bed of the river, and the Government could not without their consent have reduced the natural flow below the amount necessary to provide those amounts. But, as far as the record discloses, this would obviously have left the Government free to impound and distribute through the irrigation system all waters in excess of those amounts. In any event, the question whether the Government could have put the Guayabal Dam and Reservoir into operation without the consent of the owners of unextinguished concessions is wholly immaterial here, because the record shows that the consent of the then owners of the lands here involved was actually obtained in the contracts of August 26, 1914, and the Government has never contended that those contracts were without valid consideration moving to the Government.

(7) Again on page 15 of respondents' brief, immediately following the allegation last above discussed, referring to the lands of the respondent *sociedad* here involved, it is alleged that "none of them received or receive water from the irrigation system," and further that "there is no evidence of any kind anywhere in the record that in the delivery of this water a single facility of the irrigation system is used except that the water of the Jacaguas River to which respondents are entitled and which the Government agreed to deliver is held back by the Guayabal Dam."

This surprising contention, raised here for the first time, is elaborated by the respondents in their Point II (Respondents' Brief, pp. 31-33), hereinafter discussed (*infra*, pp. 27-28). It is sufficient at this point to say that respondents' allegation last above quoted is in positive and irreconcilable conflict with paragraph 27 of their answer (R. 21) wherein they admitted

that the lands in question had received *"from the Southern Coast Public Irrigation System"* such waters as they were entitled to receive; with paragraph 20 of the Agreed Statement (R. 66) wherein respondents expressly agreed that those lands "have been supplied since the year 1915 and are now being supplied with water for the purpose of the irrigation of said lands *from the Southern Coast Public Irrigation System"*; and with paragraph 23 of the Agreed Statement (R. 67), wherein respondents expressly admitted that "the defendant partnership is liable to the plaintiff herein if said Act No. 49 of 1921 is valid."

(8) Again on page 15 of respondents' brief, near the bottom of the page, referring to the six plantations involved in this action, it is alleged that "none of them received the slightest bit of benefit from the irrigation system" because, in substance, the water received from the irrigation system was only the fair equivalent in value of the concessions whose suspension was the consideration for the delivery of that water.

This is an obvious *non sequitur*. As we have already pointed out in the discussion of another of respondents' erroneous statements (*supra*, pp. 2-3), even if the water be held to constitute no benefit to the lands derived from the irrigation system, upon the theory that it was fully paid for by the suspension of the prior water rights under the contracts, nevertheless there were many other possible benefits to those lands from the development, operation and maintenance of the system, whose existence is not only not negatived by anything in the record, but, on the contrary, is in effect affirmed by the legislature in the Act levying the assessments. See also *infra*, pp. 30-31.

(9) On page 20 of respondents' brief, it is alleged that "Petitioner asks this court to overthrow the long established rule that in the federal courts the citizenship of a partnership is for purposes of jurisdiction the citizenship of its individual members."

This is a very grave misstatement of petitioner's position.

The petitioner asks of this court no such thing, as will be readily established by reference to Point I (pages 19 to 39) of petitioner's Supporting Brief. Petitioner finds fault, not with the partnership rule of federal jurisdiction, but with its application to the erroneously so-called "partnership" respondent in this case, which is in fact not a "partnership" in the ordinary sense, but a Puerto Rican civil law *sociedad en comandita,* possessing all of the distinctive characteristics of a corporation.

(10) On page 23 of respondents' brief, it is alleged that petitioner's present contentions as to the complete corporate character and characteristics of the *sociedad en comandita* "run exactly counter to the record," and in support of that statement respondents quote from Paragraph 2 of the Agreed Statement (R. 60), from the original complaint (R. 76), from the amended complaint (R. 1) and from the amended motion to remand, where there are references to the defendant *sociedad* as a "civil agricultural limited partnership."

It is true that in the documents mentioned the official but inaccurate English name of the *sociedad en comandita* was employed, but petitioner's position throughout the whole progress of the case consistently has been in substance that it **makes no difference by what generic statutory name the entity is designated,** because it nevertheless possesses all of the essential characteristics of a corporation within the rule of the *Letson case,* (*cf. Supporting Brief,* p. 33) and therefore is in reality a corporation for federal jurisdictional purposes. See paragraph 1 of the Amended Motion to Remand (R. 9), and the Petition and Supporting Brief in this court, pages 13 and 19-39.

(11) Under Point II, page 31, of respondents' brief, it is asserted that "there is no evidence in the record that the lands of the respondents which it is sought to tax are supplied with water from the southern coast public irrigation system."

This is a reiteration of the error dealt with under (7) above

(*supra*, pp. 6-7), and, as there shown by specific references, is in direct conflict with the agreed facts of the case. See also *infra*, pp. 27-28.

(12) On page 37 of their brief respondents assert that "the People of Porto Rico decided to rob them" (the respondents) "of the fruits of their contract by legislative fiat and passed Act No. 49 of 1921." This extravagant assertion of opposing counsel is so completely without support in the record, and so obviously foreign to any issue before this Court, as to call for no further comment.

(13) On page 40 of respondents' brief it is alleged (italics supplied) that the Act of 1921 attempts to make the respondents "bear a share not only of the cost of maintaining the irrigation system *but also the cost of constructing it*, and not only the cost of maintaining *and building* the Guayabal irrigation project on the Jacaguas River, *but also the cost of maintaining and constructing all of the irrigation and hydro-electric projects on the southern coast of the Island of Porto Rico, from none of which do they receive any benefit.*"

In so far as this allegation asserts that the Act of 1921 charges the lands assessed thereunder with costs of construction, it is positively refuted by Section 2 of that Act (Supporting Brief, App. I, p. 58), from which it will be seen that the assessments thereunder are based expressly and exclusively on "the cost of operation and maintenance of the irrigation system."

In so far as respondents' allegation last above quoted implies that the lands of the respondent *sociedad* here involved derive no benefits from the irrigation system, it is wholly without support in the record. In this connection attention is invited to what is said concerning benefits under (1) above (pp. 2-3).

(14) Again on page 40 of their brief, immediately following the erroneous statement last above discussed, respondents allege that "The law" (Act of 1921) "puts the respondents on

a par with land-owners who receive waters from the irrigation service without ever having owned concessions and puts them at a disadvantage compared with those who had water rights which were condemned for cash or were relinquished for a price credited upon the annual assessment."

The fallacy of this assertion is shown by a simple comparison between Section 2 of the Act of 1921 (Supporting Brief, App. I, p. 58), which, as pointed out immediately above, by necessary inference excludes all cost of construction from the computation of assessments under that Act, and Section 11 of the Act of 1913 (Supporting Brief, App. III, p. 69), expressly including "the amount of the interest and principal or sinking fund due upon outstanding irrigation bonds for the ensuing fiscal year" in the computation of each annual assessment under the last mentioned act. Thus it clearly appears that those assessed under the Act of 1921 pay no part of the cost of construction, while the lands originally included in the district continue to bear the whole cost of interest and amortization charges upon the bonds representing the cost of the construction of the works. It is reasonable to infer that this important distinction in rates of assessment in favor of the lands assessed under the Act of 1921 was deliberately made by the legislature because of the suspended but unextinguished water rights appurtenant to those lands. In any event the distinction is there, and its existence constitutes complete refutation of respondents' allegation last above mentioned.

(15) On pages 44-45 of respondents' brief, it is alleged that the assessments imposed by the Act of 1921 are "imposed solely because of the enjoyment of the respondents of rights under contracts with the People of Porto Rico," and that "In the case at bar the Legislature is attempting to take away with one hand what it has contracted to give with the other."

These are substantial repetitions of prior allegations whose fallacy has already been indicated (*supra*, pp. 1-3, 7).

(16) On page 73 of their brief respondents assert that "The Government agreed when it made the contracts that the only benefit which the concession holders would obtain from the construction of the Guayabal Dam was in more uniform delivery of water"; and further that "the respondents' predecessors and their lessors received no legal benefit from the construction of the irrigation system for which they could be taxed by a special assessment"; and further that "The contracts by their very words bar all consideration of actual or legal benefit."

Although it is true that the contracts dealt only with the water rights and their suspension in exchange for equivalent deliveries of water from the system, they contain nothing whatever to support this contention of the respondents. Nothing whatever was said and nothing could legally have been said in the contracts about possible benefits to the lands described, other than those incident to the stipulated deliveries of water to those particular lands, or about possible future assessments on account of such other benefits. Those were matters wholly outside the authorized purpose and scope of the contracts, as shown by the authorizing statute, Sec. 13 of the Act of 1913 (Supporting Brief, App. III, p. 75). And as to the existence of such other benefits, attention is again invited to the discussion under (1) above (pp. 2-3).

(17) On page 89 of respondents' brief, it is contended (italics supplied) that "the tax attempted to be levied by Act No. 49 of 1921 was aimed *solely* at the land owned and leased by respondents."

As far as the word "solely" is concerned, the record discloses no support for any such contention.

(18) On page 89 of their brief, respondents again reiterate their contention that "respondents' property" (referring to the lands of the respondent *sociedad* here involved) "is in no wise benefited by the irrigation system."

As above pointed out (*supra*, pp. 2-3), the record discloses

no evidence in support of that contention, and it is in effect refuted by the Act of 1921, which, in effect, constitutes a conclusive legislative declaration that the lands in question are specially benefited at least to the extent of the assessments imposed.

ARGUMENT

RESPONDENTS' POINT I
THE JURISDICTIONAL QUESTION

A. Although respondents continue to insist that the District Court of the United States for Puerto Rico had jurisdiction of this case upon the ground of diversity of citizenship, yet nowhere in their brief do they point out a single essential in which the characteristics of a *sociedad en comandita* differ from those of a private corporation. They make no real attempt to controvert petitioner's position that the *sociedad en comandita* possesses all of the essential characteristics of a corporation and should therefore be treated as a corporation for federal jurisdictional purposes (Supporting Brief, pp. 19-39).

(1) As above pointed out ("Facts", "(9)" and "(10)", *supra*, pp. 7-8), respondents' statements that petitioner "asks this court to overthrow the long established rule that in the federal courts the citizenship of a partnership is for purposes of jurisdiction the citizenship of its individual members" (Respondents' Brief, p. 20), and that petitioner's position "runs exactly counter to the record" (Respondents' Brief, p. 23), are grave misstatements of petitioner's position. Those statements in respondents' brief are seriously erroneous.

(2) Respondents rely (Brief, p. 20) on this Court's denial of certiorari in the case of *People of Porto Rico* vs. *Fortuna Estates* (259 U. S. 587). But, as was pointed out in petitioner's supporting brief (p. 26 and Footnote "6" at the bottom

of that page) the jurisdictional question here involved was not really involved in that case; because, as the Circuit Court of Appeals itself there held (279 Fed., at pp. 503, 504) *federal jurisdiction existed in that case in any event.* **The question here presented was there wholly moot.**

(3) Respondents say (Brief, p. 21) of the decision in the case of *Liverpool, Brazil & River Platte Navigation Co.* v. *Agar & Lelong*, 14 Fed. 615,

> "a Louisiana case, but that case was *expressly repudiated* by the same court in *Empire Rice Mill Co.* vs. *Neumond*, *supra*. Both of these cases dealt with the civil law concept of a partnership as distinct from a common law concept." (*Italics supplied.*)

Respondents' statement is in the nature of a "dangerous half truth." The case of *Empire Rice Mill Co.* vs. *Neumond*, 199 Fed. 800, is discussed on page 37 of Petitioner's Supporting Brief. As there pointed out the Louisiana *"société"*, as interpreted by the court in that case, appears to differ from the Puerto Rican *"sociedad en comandita"* in that under the Louisiana Law (*Empire Rice Mill Co.* vs. *Neumond, supra*, at page 803) judgment may be "rendered against the firm and the partners *in solido*"; which is not true in a suit against a Puerto Rican *sociedad en comandita*. Furthermore, it is not accurate to say, as respondents do, that the *Empire Rice Mill Co.*, vs. *Neumond* case "expressly repudiated by the same court" the earlier case of *Liverpool, Brazil & River Platte Navigation Co.* vs. *Agar & Lelong, supra*. The judgments in the two cases were by two different district judges. It is simply an instance of the second district judge differing in opinion from the district judge who decided the earlier case. Neither case was taken to a higher court. The earlier case was decided by Judge Billings upon a careful analysis of the character of the *société* under Louisiana laws. Judge Foster, in the *Empire Rice Mill Co.* case relied upon the *Great Southern*

Fireproof Hotel Co. case, *supra*,[1] which had been decided by this Court in the meantime. But, in any event,—if Judge Foster's construction of the Louisiana laws, in the *Empire Rice Mill Co.* case (199 Fed., *supra*, at p. 803) that "the members may be joined in the same proceeding, and judgment rendered against the firm and the partners *in solido*," is correct,—then the Louisiana cases have no real bearing here, because of the difference above noted, and which was pointed out in petitioner's supporting brief (p. 37) between the Louisiana laws and those of Puerto Rico. In a suit against a Louisiana *société* it appears that the individual partners are really parties to the suit, because the judgment can be rendered against the firm and the partners *in solido*. Whereas, in a suit such as the one at bar against a Puerto Rican *sociedad en comandita*, the *sociedad* is the only party defendant to the suit; because the judgment runs only against it, and not against its members individually, nor against them *in solido* with the *sociedad*.

(4) Respondents say that (Brief, p. 22):

> "Porto Rican limited partnerships are no different in the respects pointed out above from limited partnerships in the United States. All of the things which may be done in the articles of a limited partnership in Porto Rico may be done in many of the States of the Union,"

and respondents cite in support of that statement statutes of New York, Massachusetts, New Jersey, and Pennsylvania. The statutes which respondents cite are quoted in Appendix I to this brief (*infra*, pp. 33-40). They do not bear out respondents' statement.

To the contrary, examination of them shows that, in all of those States,—*including Pennsylvania*—the "limited partnership" is simply the ordinary partnership of the common law, a group of individuals doing business in a firm name, with

[1] *Great Southern Fire Proof Hotel Company* vs. *Jones*, 177 U. S. 449. See Petitioner's Supporting Brief, pp. 28-35.

only the added element of the contribution of certain amounts of property or money by silent partners who (except as to the capital which they thus adventure) are not liable for the debts of the firm any more than though they had loaned their money to the partners and taken promissory notes for it. Such a partnership is not a juridical person, and does not have the essential elements of a corporation, or "corporate body," as those elements were stated by this Court in the *Letson* case.

The striking thing **illustrated by these "limited partnership" statutes which respondents cite** ***is the sharp line of cleavage*** **which they show** between such true "limited partnerships" which are not corporate bodies nor juridical persons, on the one hand, and on the other hand such corporate bodies as the "partnership association" of Pennsylvania, one of which was before this Court in the *Great Southern Fireproof Hotel Co.* case, *supra*. **The Pennsylvania statutes providing for the "partnership association" are wholly different from those providing for the limited partnership** and are found under a different heading in Purdon's Digest (2 Purdon's Digest, 13th Ed., pp. 2023-2030). New Jersey also provided for such a "partnership association", —a corporate body,—by statute in 1880, nearly fifty years after the date of its "limited partnership" statute, and clearly differentiated it in every respect from the limited partnership. Its "partnership association" statute (Pub. Laws of 1880, p. 304; Compiled Statutes of New Jersey of 1911, Vol. 3, pp. 3921-3924) is closely modeled upon the Pennsylvania "partnership association" statute.

Likewise in yet another State, Michigan, there exist side by side the "limited partnership" and the corporate body, the "partnership association", clearly differentiated from each other. (*"Limited Partnerships"*, Compiled Laws of Michigan, 1929, Secs. 9885-9908, tracing back to the Compiled Laws of Michigan of 1857; pertinent portions quoted in Appendix I, *infra*, pp. 38-40; and *"Partnership Associations"*, Act No. 191

of 1877, now, with amendments, become Sections 9909-9928, Compiled Laws of Michigan, 1929; pertinent portions quoted in Appendix II, *infra*, pp. 45-47).

Clearly marking the distinction between these two wholly different types,—the "limited partnership" on the one hand, merely a form of the familiar common law partnership, not a juridical person, and not possessing the essential elements of a corporate body as enumerated by this Court in the *Letson case*; and on the other hand the "partnership association", a true corporate body,—the pertinent portions of the statutes cited by respondents relating to "limited partnerships" in New York, Massachusetts, New Jersey, and Pennsylvania, and also those of the State of Michigan, are collected in Appendix I of this brief, *infra*, pp. 33-40; and the statutes of Pennsylvania, New Jersey and Michigan providing for the "partnership association" are likewise collected in Appendix II, *infra*, pp. 41-47.

Very few, if any, of the States of the Union other than those three, Pennsylvania, New Jersey and Michigan, except Virginia and Ohio have provided for such "partnership associations."[1] It is especially noteworthy that the Supreme Court of Michigan has held that its statute concerning "partnership associations" is "almost an exact reprint of the Pennsylvania Act of 1874" (*Rouse, Hazard & Co.* v. *Donovan, Wayne Circuit Judge*, 104 Mich. 234, 238, 62 N.W. 359[1]); and that *the law governing corpora-*

[1] The Supreme Court of Michigan said in this case:

"Pennsylvania, in 1874, enacted the first law in this country for the organization of limited partnership associations. In 1877 the legislature of Michigan passed an act similar in all essentials to that of Pennsylvania. It is an almost exact reprint of it. The Pennsylvania act first required the capital stock to be paid in cash. It was afterwards amended so as to permit contributions to be made in real or personal estate. Virginia, New Jersey,

tions, rather than the law governing partnerships, is applicable to such a "partnership association." *Armstrong* v. *Stearns*, 106 Mich. 604, 121 N.W. 312, 314; *Rouse, Hazard & Co.* v. *Detroit Cycle Co.*, 111 Mich. 251, 69 N.W. 511, 512, 513; *Staver & Abbott Mfg. Co.* v. *Blake*, 111 Mich. 282, 69 N.W. 508, 510.

"The Detroit Cycle Company, Limited, filed its articles in the office of the register of deeds for Wayne County, Michigan, as a limited partnership association" (at p. 512) * * *. Nearly all the questions involved in this proceeding are involved in the case of *Staver & Abbott Mfg. Co.* v. *Blake*, (decided at the present term of this court) *supra*. It will not be necessary to refer to the opinion in that case further than to say that, *so far as the question of whether the law of limited partnerships applies to the defendant association, or the law of corporations, the answer is that the case must be controlled by the law applicable to corporations*," (p. 513). (*Italics ours.*)

Rouse Hazard & Co. v. *Detroit Cycle Co.*, 111 Mich. 251; 69 N.W. 511, 512, 513.

"These defendants have never agreed to be partners, and have never held themselves out to plaintiff or to the world as such. By the purchase of stock, they became members of a body, organized under a law, which made its capital and assets alone liable for its debts. This is a legal entity—*and it is immaterial what name you give it*—with which the plaintiff dealt, made contracts, and to which it gave credit. * * * It is unnecessary to determine whether these associations are corporations under our Constitution * * *. *There is no difference in principle between the two.* Each is a legal entity, whose sole warrant

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and Ohio enacted the same law in 1875, 1880, and 1881, respectively." (104 Mich. 238; 62 N.W. at p. 360.)

The Virginia act was carried into chapter 135 of the code of that State of 1887 and may be found in Sections 2878 to 2886 of Pollard's Code of Virginia of 1904. It appears to have been comparatively little used, and was repealed by Section 4359 (76) of the Code of 1930.

The Ohio act is still in force. Sections 8059 to 8078, Vol. 2, General Code of Ohio (Page's "Revised Ed." of 1921).

for existence is found in, and whose powers and liabilities are fixed by, statute. * * * The policy of the law for partnership associations, limited, is to relax the common law rule, to permit parties to limit their liability and exempt themselves from a liability which may be ruinous." (*Italics supplied.*)

Staver & Abbott Mfg. Co. v. *Blake*, 111 Mich. 282; 69 N.W. 508, 510.

And it has become, by repeated decisions, the settled doctrine of the Supreme Court of Michigan that:

"Partnership associations limited are governed by the principles applicable to corporations."

Goodspeed v. *Hally*, 199 Mich. 273; 165 N. W. 943, 945 (December 27, 1917).

Union Trust Co. v. *Detroit Common Council*, 170 Mich. 692; 137 N.W. 122, 125.

Sanitas Nut Food Co. vs. *Force Food Co.*, 124 Fed. 302.

Fargo v. *Powers*, 220 Fed. 697, 708.

Re *Caledonia Coal Co.*, 254 Fed. 742, 746.

(5) Respondents further, after citing (Brief, pp. 20-21) the cases of *Chapman* v. *Barney, supra, Great Southern Fireproof Co.* v. *Jones, supra*, and other cases which they say sustain their contention that it is immaterial for federal jurisdictional purposes whether or not the *sociedad en comandita* possesses all the essential elements of a corporation, assert that (Brief, p. 21):

"The only decision contrary"

is the case of *Liverpool, Brazil & River Platte Navigation Co.* v. *Agar & Lelong, supra*, the Louisiana case above discussed.

Here again respondents are gravely in error. Prior to the decision of this Court in the *Great Southern Fireproof Hotel Co.* case, *supra*, in the year 1900, there had been at least three other opinions in which federal circuit courts, and the Circuit Courts of Appeals of the Second and Sixth Circuits, had sustained the federal jurisdiction in cases arising in New York and Ohio circuits

where Pennsylvania "partnership associations" were parties, on the ground of diversity of citizenship. In each of those cases the federal circuit courts and the Circuit Courts of Appeals had expressly held that such Pennsylvania "partnership associations" do possess the essential elements of corporations, and were to be treated as corporations for the purposes of federal jurisdiction. Those are the cases of

Bushnell v. *Park Bros. & Co.*, 46 Fed. 209 (Cir. Ct.) Southern Dist. N. Y., May 1, 1891; LACOMBE, Circuit Judge).

Same case affirmed (accepting the jurisdiction without discussion), 60 Fed. 583 (C. C. A., 2nd Cir., March 12, 1894, before WALLACE, LACOMBE and SHIPMAN, Circuit Judges).

Youngstown Coke Co., Ltd. v. *Andrews Bros. Co.*, 79 Fed. 669, at pp. 669 to 676 (Cir. Ct., Northern Dist. Ohio, April 14, 1897; SAGE, District Judge).

Andrews Bros. Co. v. *Youngstown Coke Co.*, Ltd., 86 Fed. 585, 586 to 596 (the same case, with title reversed, in which Judge SAGE had delivered the opinion, *supra*, in the Circuit Court; C. C. A., 6th Circuit, April 11, 1898; TAFT and LURTON, Circuit Judges, and CLARK, District Judge; opinion by LURTON, J.).

JUDGE LACOMBE'S opinion in the Circuit Court in *Bushnell* v. *Park Bros. & Co., Ltd.*, *supra*, closed with the conclusion that:

> "For the purposes of this suit the defendant must therefore be considered to be a Pennsylvania corporation, and as such has the right to remove." (46 Fed. 209, *supra.*)

JUDGE SAGE concluded his opinion in the Circuit Court in *Youngstown Coke Co., Ltd.* v. *Andrews Bros. Co.*, *supra*:

> "It is clear that the plaintiff company is endowed with all the essential characteristics of a corporation, and that, for the purposes of jurisdiction, it must be regarded as such." (79 Fed. 669, *supra*, at p. 676).

And Circuit Judge LURTON in his opinion in the Circuit Court of Appeals, Sixth Circuit, in which Circuit Judge TAFT (as he then was) as well as District Judge CLARK, concurred, in *Andrews Bros. Co.* v. *Youngstown Coke Co., supra,* after a very careful examination of the Pennsylvania statutes concerning these "partnership associations," concluded:

> "Our conclusion, therefore, is that the Youngstown Coke Co. is a corporation and a citizen of Pennsylvania, within the meaning of the jurisdictional requirement in respect to diversity of citizenship." (86 Fed. *supra,* 585, at pp. 595-596).

And in line with those decisions there was also the analogous holding to which respondents advert on page 21 of their brief, of District Judge BILLINGS, in the Circuit Court for the Eastern District of Louisiana in December, 1882, in *Liverpool, Brazil & River Platte Navigation Co.* v. *Agar & Lelong,* 14 Fed. 615, 616-617, *supra,* in which Judge Billings after referring to the decisions of this Court in the *Letson* case and the *Whitton* case (*Louisville R. R. Co.* v. *Letson, supra,* 2 How. 554; and *Railway Co.* v. *Whitton,* 13 Wall. 283), that a corporation is, so far as relates to the enforcement of rights of action by suit in the federal courts, a citizen of the State under whose laws it is organized, although some of the incorporators might not be within that jurisdiction, said:

> "The reasoning which leads to this conclusion, with reference to corporations, leads to the same conclusion with reference to Louisiana commercial partnerships." (14 Fed. *supra,* at p. 616).[1]

[1] None of these decisions were called to the attention of this court by counsel in the *Great Southern Fireproof Hotel Co.* case, as appears from the "Supplemental Memoranda for Respondents" in that case, filed March 24, 1900, copied in Appendix IV, pp. 91 to 93, of Petitioner's Supporting Brief herein. Nor is any of them mentioned in the opinion of this Court in the *Hotel Co.* case. (177 U. S. 449, *supra*).

This Court decided that case without having had called to

(6) Respondents urge (Brief, pp. 22-23) that law writers and translators of the Codes habitually translate the Spanish word *"sociedad"* and the analogous French word *"société"* into English by the word *partnership*. That is, of course, true; and equally of course is simply another illustration of the difficulties met in translating from one language into another, particularly in translating words representing certain definite legal concepts in one language into another language which contains no words representing exactly the same legal concepts. Respondents do not attempt to question the accuracy of petitioner's statements of the characteristics of the Spanish (and Puerto Rican) *"sociedad,"* and of its inherent difference from the English common law concept of "partnership." The one inherently means an artificial entity, a juridical person. The other inherently means a group of individuals doing business under a firm name, with no juridical personality separate from that of the individuals. In the nature of things the one word is not and cannot be an accurate translation of the other. The attempt to render the Spanish into ordinary English words is the thing that has been responsible for the confusion in the decisions of the federal District Court of Puerto Rico and of the Circuit Court of Appeals, First Circuit, upon the jurisdictional question here involved. The reasoning has run simply: The official translation of *"sociedad"* is "partnership"; it so appears in the official English text of the Codes. But a "partnership" is simply a

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its attention in any way, or apparently realizing, that in holding that Pennsylvania "partnership associations" were, for jurisdictional purposes of the federal courts, to be treated as ordinary partnerships, instead of as corporations, it **was directly overruling the decisions** of two Circuit Courts of Appeals,—those of the Second and Sixth circuits,—as well as of two Circuit Courts, those for the Southern District of New York and for the Northern District of Ohio, and in effect also that of the Circuit Court for the Eastern District of Louisiana.

group of individuals doing business under a firm name; it is the established rule that federal jurisdiction over a "partnership" is determined by the domicile of the partners. *Ergo*, federal jurisdiction over the Puerto Rican *"sociedad"* is determined by the domicile of its members. That seems easy and plain. It forgets only the tricky difficulties of translation. Habitual translation to the contrary notwithstanding, the Puerto Rican *"sociedad"* is not a common law "partnership."

(7) Respondents ask (Brief, p. 23):

> "Can it be, as inevitably follows from petitioner's contention, that there is under the civil law no partnership of any kind?"

The answer is plain; and is, it is believed, well understood. Under the civil law the "partnership" in the common law sense of individuals simply doing business together under a firm name is not the usual thing. It may, however, exist. Article 1571 of the Civil Code of Puerto Rico (quoted on p. 83, Appendix IV, Petitioner's Supporting Brief) provides that the *sociedad* does not have juridical personality if the contract creating it is kept secret among its members and if each of the members contracts under his own name with third persons, and that

> "This kind of *sociedad* shall be governed by the provisions relating to property held in common."

(8) Respondents say (Brief, p. 26) that a Puerto Rican partnership with share capital is more like a joint stock association than a corporation. Presumably respondents refer to the kind of *sociedad* which is denominated *sociedad anónima* (Puerto Rican Code of Commerce, Art. 122, par. 3; quoted on pp. 80-81, Appendix IV, Petitioner's Supporting Brief). But that very kind of *sociedad* is ordinarily picked out for translation into English by the word *"corporation"* (e.g. official English translation of the Puerto Rican Code of Com-

merce, Art. 122, par. 3; quoted p. 80, Petitioner's Supporting Brief; although the *sociedad en comandita* is equally a juridical entity. They are both given "juridical personality", and created "juridical persons" by the same sections of the Codes (Code of Commerce, Art. 116; Civil Code, Art. 27 (2); quoted in App. IV, pp. 79, 81-82, Supporting Brief). Respondents' statement that it is "more like a joint stock association than a corporation" is erroneous. A joint stock association as ordinarily known in the United States and England is not a juridical person. That lack of juridical personality is its essential characteristic; and it was because of that very characteristic,—the lack of juridical entity,—that this Court, in *Chapman* v. *Barney*, 129 U. S. 677, 682, upon which respondents rely (Respondents' Brief, p. 26, *supra*), held that such a joint stock association was "a mere partnership" in the common law sense of the term. **It is wholly different from the Puerto Rican *sociedad*, which does have juridical personality.**

The New York courts have expressly held that a "joint stock association" organized under the laws of that State *does not possess juridical personality* separate from that of its members. It is not a juridical person. The Court of Appeals has said:

> "The creation of the corporation necessarily destroys the common-law liability of the individual members for its debts, and requires at the hands of the creating power an affirmative imposition of new personal liabilities or a specific retention of old ones from the destruction which would otherwise follow. Exactly the opposite is true of joint-stock companies. Their formation destroys no part or portion of their common-law liability for the debts contracted. Those debts are their debts for which they must answer." *People* v. *Coleman*, 133 N. Y. 279, 281; 31 N. E. 96, 97 (1892).

And the Appellate Division, First Department, has said:

> "A corporation is an artificial entity, existing in contemplation of law in the state of its creation. It can

have no existence elsewhere and is recognized in other jurisdictions only by comity * * *. Whereas *a joint stock association,* though it have some of the rights of a corporation and may sue and be sued in the name of its president, still *does not exist as an entity distinct from its members.*" *Matter of Willmer,* 153 App. Div. 804; 138 N. Y. Supp. 649 (1912).

(9) Respondents say (Brief, p. 26) that:

"Porto Rico like the States of the United States has true corporations (Corporation Law of Porto Rico, Compilation of Revised Statutes and Codes of Porto Rico, p. 28)."

It is true that, since the American occupation, by Puerto Rican Act No. 30 of March 9, 1911, provision has been made for the organization of "private corporations," *eo nomine,* of various kinds. This permits residents of the continental United States desiring to do business in the Island to organize there under a form of statute such as that to which they are accustomed in the States of the Union. It thus provides a method of organization alternative to that known to the civil law. It is not a part of the civil law system. It is not seen how it has any bearing on the questions here involved.

(10) Respondents say (Brief, p. 25) that petitioner's quotation from the decision of the Supreme Court of Puerto Rico in *People* v. *Rivera Zayas,* District Judge, 29 P. R. Rep. 423, is *"inapposite",* and that the Supreme Court of Puerto Rico *"wrote an opinion in a matter which did not concern it."* Respondents' statement is manifestly erroneous. The opinion of the insular Supreme Court was written in deciding adversely to the contention of the members of this very *sociedad,* a petiton for certiorari to reverse the order of the insular district judge allowing them to inject themselves into a suit begun against the *sociedad* alone in the insular district court, for the purpose of petitioning for its removal to the federal court. Petition for certiorari to the insular Supreme Court necessarily involved, directly, the question whether or not a

suit begun against the *sociedad* alone was really a suit against its individual members so as to make them "parties" to the controversy involved. The insular Supreme Court decided that contention against them, and in so deciding it, directly held that an action begun, as was the one here at bar, in an insular district court, in which the plaintiff's complaint names as the sole defendant a *sociedad en comandita,*—in the *Rivera Zayas* case this very same *sociedad* involved here, RUSSEL & Co., S. *en* C.,—is an action against the artificial person, the *sociedad,* alone; and is not an action against its individual members. That the *sociedad* is to be deemed the sole party defendant to the suit, and that the judgment will not run against the individual members. And, in so deciding, the Supreme Court of Puerto Rico said, as already quoted on page 23 of Petitioner's Supporting Brief,

> "We think that the five or six individual members who form this *Sociedad en Comandita* would be the first to disclaim that they were collectively and individually responsible for all the acts of the *Sociedad en Comandita.* We hold, however, that a *sociedad en comandita* is an entity distinct from the members that compose it.
>
> "In order that a suit may be removed * * * *it is only the parties to a suit who can petition for removal.* The person or entity sued in this case was Russell & Co. It was the essential and only party defendant to the suit. Any existing obligation was between the People of Porto Rico and Russell & Co., and these individual members can not change the nature of the obligation by asking to be made parties."
>
> *People* v. *Rivera Zayas, supra,* 29 P.R. 423, 430-431.

B. As a further ground for federal jurisdiction herein respondents now argue that this case is one of a civil nature arising under a law of the United States. Thus, they urge, it comes within the jurisdiction of federal district courts as defined by Section 24 of the Judicial Code. Their argument (Resp. Br., pp. 27 *et seq.*) rests mainly on their contention

that the action was brought under the Act of Congress of April 23, 1928 (45 Stat. 447), quoted on pages 5 and 6 of respondents' brief.

Petitioner concedes that this case falls within the purview of that Act of Congress and that petitioner is thereby restricted to an action at law as the only means of enforcing payment of the assessments in question. But it cannot logically be said that this is a suit "arising" under that act within the meaning of Section 24 of the Judicial Code; because *the Insular Government had an inherent right to proceed for the collection of any tax or assessment by action at law if it saw fit to adopt that method of procedure,* and therefore the effect of the Act of Congress of 1928 was not in any real sense to create the right of action herein asserted by the Insular Government, but *its effect was merely to restrict the Insular Government* to its already existing right to proceed by action at law in the class of cases described in the Act. It merely forbade the Insular Government from using other, more summary, remedies. The right to bring, or to maintain, the present action is in no way dependent on that Act. It does not arise under it.

It should also be noted that no question as to the interpretation or application of that Act of 1928 has arisen in the case, it being expressly stipulated in the Agreed Statement of Facts that the defendant is liable for the assessments claimed in the complaint *if Puerto Rican Act No. 49 of 1921 is valid* (R. 67, Par. 23).

C. In further support of their argument that this case arises under federal laws, respondents also advance the bald assertion that, because the People of Puerto Rico is a political entity constituted by federal statute, therefore, any suit brought by that entity is necessarily, because of that fact alone, one which arises under the Constitution or laws of the United States (Resp. Br., pp. 27-28). Respondents cite no authority in support of this novel proposition, and none has been discovered by counsel for the petitioner.

If, as in effect here contended by respondents, every suit brought by or against any territorial government within the United States is necessarily a suit arising under the Constitution and laws of the United States, and therefore within the jurisdiction of the federal courts for the sole reason that the territorial government is a political entity created and empowered by Act of Congress, then it would follow by precisely similar reasoning that every action by or against any state, excepting perhaps the original thirteen, would have to be similarly regarded, for each state created and admitted to the Union since the adoption of the Constitution has been so created and admitted under provisions of the Federal Constitution and Acts of Congress.

In further reply to so revolutionary a doctrine it seems sufficient to cite the principles so well settled by this Court, that, for federal jurisdictional purposes:

(1) A suit is not one arising under the Constitution or laws of the United States unless it really and substantially involves a controversy as to the effect or construction of the Constitution or some law or treaty of the United States on the determination whereof the result depends; and

(2) This must fairly appear on the face of the record at the time when federal jurisdiction is assumed.

Metcalf v. *Watertown*, 128 U. S. 586, 588-590.
Florida Central etc. R.R. Co. v. *Bell*, 176 U. S. 321, 327-328.
Shoshone Mining Co. v. *Rutter*, 177 U. S. 505-509.
Defiance Water Co. v. *Defiance*, 191 U. S. 184, 190-194.
Devine v. *Los Angeles*, 202 U. S. 313, 334.
Louisville and Nashville R.R. Co. v. *Mottley*, 211 U. S. 149, 152-154.
Barnett v. *Kunkel*, 264 U. S. 16, 19-21.

RESPONDENTS' POINT II

APPLICATION OF ACT OF 1921 TO LANDS IN QUESTION

In their present brief, for the first time in this case, respondents attempt to raise an issue as to whether the insular Act

of 1921 applies at all to the lands of the respondent *sociedad* described in the complaint. They now contend in substance that even if the Act be held valid as against the diversified attack made upon it in this case, nevertheless the lower courts were right in giving judgment against the petitioner, because, they contend, there is nothing in the record to show that the lands in question are receiving, or ever did receive, any water from the southern coast public irrigation system (Resp. Br., pp. 31-33).

As we have clearly shown above under the heading "FACTS" (*supra*, pp. 6-7), this contention is in direct conflict with specific stipulations of the Agreed Statement of Facts (R. pp. 21, 66, 67), and calls for no further reply.

PAIRMENT OF NTRACT.

RESPONDENTS' POINT III

IMPROPER DELEGATION OF LEGISLATIVE POWER

The only substantial parts of respondents' argument on this point (Resp. Br. pp. 34-46), not anticipated and fully answered in petitioner's discussion of the same matter (Petition and Supporting Brief, Point III, pp. 50-56), are, we believe, those comprised in certain erroneous allegations of fact with which we have already sufficiently dealt above under the heading "FACTS," subdivisions (1), (12), (13), (14) and (15) (*supra*, pp. 1-3, 8-9, 9-10 and 10).

RESPONDENTS' POINT IV

RULE OF UNIFORMITY OF TAXATION

Respondents contend at great length that Act No. 49 of 1921 violates the requirement of the Organic Act that the rule of taxation in Puerto Rico must be uniform (Resp. Br., pp. 46-77).

The gist of respondents' argument on this point seems to be that the insular act mentioned cannot be sustained as a special assessment act, because, it is contended, there is no special benefit corresponding to the assessments imposed; there-

fore, it is urged, it must be treated as an act of general taxation, and, as such, is void under the Organic Act because not uniformly applicable to all lands in Puerto Rico.

It is apparent that this whole proposition is based upon the premise that there is no corresponding benefit for the assessments imposed by the Act. But, as we have already shown, that premise rests solely upon assertions of counsel for respondents, wholly unsupported by the record, and is, in effect, refuted by the Act itself, which by reasonable implication constitutes a conclusive declaration by the Legislature that the lands assessed are benefited by the improvement therein mentioned, at least to the extent of the assessments imposed (*supra*, pp. 2-3, 7).

RESPONDENTS' POINT V
DUE PROCESS OF LAW

Again respondents' whole argument to the effect that Act No. 49 of 1921 deprives the respondents of property without due process of law (Resp. Br. pp. 78-85) is built upon their erroneous contention that that Act imposes assessments without corresponding benefits, a contention which we have shown to be absolutely untenable on the present record.

RESPONDENTS' POINT VI
EQUAL PROTECTION OF THE LAWS

Respondents' argument that the insular enactment under examination denies them the equal protection of the laws (Resp. Br., pp. 86-90), is predicated upon first, an unsupported assertion of counsel that the act "was aimed solely at the land owned and leased by the respondents," and second, a reiteration of their claim that the act imposes assessments without corresponding benefits (*Id.* p. 89).

We have already shown the fallacy in each of these contentions (*supra*, pp. 11 and 2-3). The argument falls with its unsound premises.

RESPONDENTS' POINT VII
THE TREATY OF PARIS

Respondents argue that the People of Puerto Rico is obligated under the Treaty of Paris, by which Puerto Rico was ceded to the United States, to respect vested rights acquired by inhabitants of the ceded territory under the Spanish regime, and that Act No. 49 of 1921 violates that treaty because, it is claimed, it is confiscatory of rights so acquired (Resp. Br., pp. 90-92).

This argument is clearly redundant, because it depends entirely upon first establishing that the Act is in fact confiscatory, or in other words that the Act is invalid on at least some one of the other grounds urged against it. If the Act constitutes a valid exercise of the power vested in the insular Legislature, then of course it is not confiscatory and there is no conflict with the Treaty, for the Treaty contains no agreement on the part of the United States to refrain from taxing property or rights acquired under the Spanish regime.

RESPONDENTS' POINT VIII
NOTICE AND HEARING

Respondents argue that Act No. 49 is void because it does not provide for any hearing or appeal before the taxes become fixed (Resp. Br., pp. 92-94).

True the Act does not make such provision. Nor did the New York Act under examination by this Court in *Spencer* v. *Merchant*, 125 U. S. 345, except in the matter of apportionment, which by that Act was delegated to the county supervisors; and it was the absence of such provision that was urged against the validity of the Act in that case; but this Court held that where the Legislature itself had by enactment specified the lands benefited, its action as to that subject was conclusive and beyond review. By the same reasoning it follows that where, as in this case, the apportionment of an assessment is definitely prescribed by the Legislature in

the act imposing the assessment—reduced to a mere mathematical computation by rules leaving no discretion whatever to administrative agents—the action must as to that subject also be equally conclusive. There was, therefore, in this instance, no occasion for any notice and hearing prior to incidence of the assessments.

As for review and appeal, ample provision therefor existed and still exists in the general laws of Puerto Rico. We refer here to Sections 308 and 310 of the Political Code of Puerto Rico, being Sections 2960 and 2962 of the "Compilation of the Revised Statutes and Codes of Puerto Rico in force on March 9, 1911." These general statutes authorize appeals to the insular Board of Review and Equalization against any assessment of real or personal property, and final hearing and determination of such appeals by that Board.

Express provision is also made in the Act of the Puerto Rican Legislature approved March 9, 1911, comprising Sections 2989 to 2993, inclusive, of the same compilation last above mentioned, authorizing payment under protest, and suit against the insular Treasurer for recovery of any revenue alleged to be due the Government of Puerto Rico from any person.

It was therefore unnecessary to make special provision in the Act of 1921 for notice, hearing or appeal, and the validity of that Act is not affected by its lack of such provisions.

RESPONDENTS' POINT IX

IMPROPER DELEGATION OF LEGISLATIVE POWER

This point was fully discussed in the Petition and Supporting Brief (Point III, pp. 50-56).

CONCLUSION

Petitioner respectfully submits that the District Court of the United States for Puerto Rico was without jurisdiction of

this case, and that this Court should reverse the judgment of the Circuit Court of Appeals, and order the case remanded to the insular District Court in which the action was begun; but in event this Court should sustain the jurisdiction of the United States District Court for Puerto Rico, it is respectfully submitted that the judgment of the Circuit Court of Appeals should nevertheless be reversed, and this Court should direct judgment for the petitioner.

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APPENDICES

State Statutes

APPENDIX I.—Limited Partnerships

APPENDIX II.—Partnership Associations

APPENDIX I

Limited Partnerships

Statutes

NEW YORK:

Limited Partnerships. **Laws of New York, 142d Session, 1919, Vol. 2, Chap. 408, Art. 8, "Limited Partnerships", Sections 90 to 102.**

"Sec. 90. *Formation.* Two or more persons may form a limited partnership, which shall consist of one or more persons of full age, called general partners, and also of one or more persons of full age, who contribute in actual cash payments, a specified sum as capital, to the common stock, called special partners, for the transaction within this state of any lawful business, except banking and insurance, by making, severally signing and acknowledging, and causing to be filed and recorded in the clerk's office of the county where the principal place of business of such partnership is located, a certificate, in which is stated: * * *."

"Sec. 96. *Liability of partners.* The general partners in such partnership shall be jointly and severally liable as general partners are by law. The special partners shall not be liable for the debts of the partnership beyond the fund contributed by them respectively to the capital of the partnership."

"Sec. 97. *General powers of partners.* Except as provided in this section, the general partners only may transact the business of the partnership, and they shall be liable to account to each other and to the special partners, for their management of the business, as other partners are by law. Except as provided in this section, a special partner may not sign for the partnership nor bind the same, nor transact any business on account of the partnership, nor be employed for that purpose, as agent, attorney, or otherwise. A special partner may, from time to time, examine into the state and

progress of the partnership business, and advise as to its management; may loan money to, and advance and pay money for the partnership; may take and hold the notes, drafts, acceptances and bonds of or belonging to the partnership, as security for the repayment of such money and interest, and may use and lend his name and credit as security for the partnership, in any business thereof, and has the same rights and remedies in these respects as other creditors might have; may lease to the general partners any real or other property for the purposes of the partnership, at such rents and on such terms as may be agreed on; and may negotiate sales, purchases and other business for the partnership, but no business so negotiated is binding on the partnership until approved by a general partner. If a special partner interfere contrary to these provisions, he shall be deemed and be liable as a general partner. If such partnership become insolvent or bankrupt, a special partner shall not, except for claims contracted in pursuance of this section, be allowed to claim as creditor, until the claims of all the other creditors of the partnership are satisfied."

"Sec. 98. *Actions by and against the partnership.* Actions and special proceedings in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners."

"Sec. 99. *Capital of special partner not to be withdrawn; when he may receive interest.* No part of the sum which any special partner contributes to the capital stock, shall be withdrawn by him or paid or transferred to him, in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any such partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest does not reduce the original amount of such capital; and if, after the payment of such interest, any profits remain to be divided, he may also receive his portion of such profit. * * *."

MASSACHUSETTS:

Limited Partnerships. **General Laws of Massachusetts, 1921, Chap. 109, Sections 1 to 11.**

"Section 1. A limited partnership may be formed by two or more persons for the transaction of any lawful business except insurance."

"Section 2. Such partnership shall consist of one or more general partners who shall be jointly and severally liable for all the debts of the partnership, and of one or more special partners who shall each contribute to the common stock in actual cash payment a specific amount as capital and who shall not be personally liable for the debts of the partnership except as hereinafter provided."

"Section 3. The business of such partnership shall be conducted under a firm name in which the names of the general partners only shall be inserted, without the addition of the word 'company' or of any other general term; or, with the consent of the members of a former firm or their legal representatives to whose business it lawfully succeeds, it may be conducted under the name of such former firm. * * *."

"Section 8. During the continuance of such partnership no part of its capital shall be withdrawn, nor shall any division of interest or profits be so made as to reduce such capital below the amount stated in said certificates; but a special partner may withdraw from the profits the interest on the capital contributed by him at any rate agreed on not exceeding six per cent per annum, if such withdrawal does not impair the capital. * * *."

"Section 9. All suits relating to the business of such partnerships shall be prosecuted by and against the general partners only, except when special partners are held liable as general partners and except when special partners are held severally liable on account of money by them withdrawn from the common stock as provided in the preceding section, in which case all the partners so liable may join or be joined."

"Section 11. Except as provided in this chapter the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners."

NEW JERSEY:

"An Act to authorize limited partnerships." Public Laws of 1837, page 121; Compiled Statutes of New Jersey of 1911, Vol. 3, pp. 3917-3921.

"1. *Formation of limited partnerships.* That limited partnerships, for the transaction of any mercantile, mechanical, or manufacturing business, within this state, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities, herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or making insurance."

"2. *Liabilities of partners.* That such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons, who shall contribute, in actual cash payments, a specific sum, as capital, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the fund so contributed by him or them to the capital."

"3. *General partners, only, to transact business.* That the general partners only, shall be authorized to transact business, and sign for the partnership, and to bind the same."

"13. *Names of general partners only to be used.* That the business of the partnership shall be conducted under a firm, in which the names of the general partners only, shall be inserted, without the addition of the word 'company' or any other general term; and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner."

"14. *Suits by and against general partners.* That suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there was no special partners."

"15. *Special partners may receive interest and profits.* That no part of the sum which any special partner shall have contributed to the capital stock, shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits, or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits."

PENNSYLVANIA:

"Limited partnerships." 2 Purdon's Digest (13th Edition), Vol. 2, pages 2299-2305.

"1. Limited partnerships for the transaction of any agricultural, mercantile, mechanical, mining and transporting of coal, or manufacturing business, within this state, may be formed by two or more persons, upon the terms, with the rights and powers and subject to the conditions and liabilities herein prescribed; but the provisions of this act shall not be construed to authorize any such partnership for the purpose of banking or making insurance."

"2. Such partnerships may consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law, and of one or more persons who shall contribute in actual cash payments, a specific sum, as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital."

"3. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same."

"16. Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners."

"17. No part of the sum which any special partner shall have contributed to the capital stock shall be liable for any debts previously contracted by the general partners; nor shall any part of such sum be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital, and if after the payment of such interest any profits shall remain to be divided, he may also receive his portion of such profits."

MICHIGAN:

Limited Partnerships. Compiled Laws of Michigan, 1929, Chap. 192, Sections 9885-9908.

"9885. *Limited partnerships; purposes of formation.* Section 1. Limited partnerships for the transaction of any mercantile, mechanical, or manufacturing business, within this state, may be formed by two (2) or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities hereinafter provided; but nothing in this chapter contained shall be construed to authorize any such partnership for the purposes of banking or insurances."

"9886. *General and special partners; liabilities.* Sec. 2. Limited partnerships may consist of one (1) or more persons, who shall be called general partners, and who shall be jointly and severally responsible as general partners now are

by law, and of one (1) or more persons who shall contribute a specific amount of capital, in cash or other property at cash value, to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership, beyond the amount of the fund so contributed by them respectively to the capital, except as hereinafter provided."

"9887. *General partners only may transact business.* Sec. 3. The general partners only, shall be authorized to transact business, to sign for the partnership, and to bind the same."

"9898. *Partnership name.* Sec. 14. The business of the partnership shall be carried on under a firm in which the name of one (1) or more of the general partners only shall be inserted, with or without the addition of the words 'and company', or any other general term; and if the name of any special partner shall be used in said firm with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, with any person except the general partners, he shall be deemed and treated as a general partner."

"9902. *Suits; prosecution.* Sec. 18. All suits respecting the business of such partnership, shall be prosecuted by and against the general partners only, except in those cases in which provision is made in this chapter, that the special partners shall be deemed general partners, in which cases all the partners, deemed general partners, may join or be joined in such suits; and excepting also those cases where special partners shall be held severally responsible, on account of any sums by them received, or withdrawn from the common stock as above provided."

"9904. *Partners; rights and liabilities.* Sec. 20. In all cases not otherwise provided for in this chapter, the members of limited partnerships shall be subject to all the liabilities, and entitled to all the rights of general partners."

"9908. *Special partners; rights and remedies.* Sec. 24. A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management; he may also loan money to, and advance and pay money for the partnership, and may take and hold the notes, drafts, acceptances and bonds of or belonging to the partnership as security for the repayment of such moneys and interest, and may use and lend his name and credit as security for the partnership, in any business thereof, and shall have the same rights and remedies in these respects, as any other creditor might have."

APPENDIX II

Statutes

"Partnership Associations"

PENNSYLVANIA:

2 Purdon's Digest, 13th Ed., pages 2023-2030.

"1. When any three or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation, within the United States or elsewhere, whose principal office or place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take the acknowledgment of deeds, a statement, in writing, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed for by each, the total amount of capital, and when and how to be paid; the character of the business to be conducted and the location of the same; the name of the association, with the word 'limited' added thereto as part of the same; the contemplated duration of said association, which shall not in any case exceed twenty years, and the names of the officers of said association, selected in conformity with the provisions of this act. And any amendment of said statement shall be made only in like manner; which said statement and amendments shall be recorded in the office of the recorder of deeds of the proper county."

"2. The members of any such partnership association shall not be liable under any judgment, decree or order which shall be obtained against such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided; that is to say, if any execution, sequestration or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects

of the company, and if there cannot be found sufficient thereof, whereon to levy or enforce such execution, sequestration or other process, then such execution, sequestration or other process may be issued against any of the members to the extent of the portions of their subscriptions, respectively, in the capital of the association, not then paid up: Provided always, That no such execution shall issue against any member, except upon an order of court, or of a judge of the court in which the action, suit or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof and the amount of capital remaining to be paid upon their respective subscriptions, and from them, or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription-list book for that purpose, and the same shall be open to inspection by the creditors and members of the association at all reasonable times."

"14. Whenever any association, formed under the act to which this is a supplement, shall have occasion to execute any deed of conveyance, or bonds with or without coupons, and mortgages, to secure purchase or borrowed moneys, such association shall have a right to adopt and use a common seal, and to acknowledge such instruments or writings, by their chairman and secretary."

"18. All real estate owned or purchased by any association heretofore created, or which may be hereafter created, under and by virtue of the act to which this is a supplement, shall be held and owned, and conveyance thereof shall be made, in the association name. Said association shall sue and be sued in their association name; and when suit is brought against any such association, service thereof shall be made upon the chairman, secretary or treasurer thereof; which ser-

vice shall be as complete and effective as if made upon each and every member of such association."

NEW JERSEY:

Public Laws of 1880, page 304; Compiled Statutes of New Jersey of 1911, Vol. 3, pages 3921-3924.

"30. *Formation of partnership association; statement; acknowledgment; record.*—Sec. 1. That when any three or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere, whose principal place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, either in money or in real or personal estate, mines or other property, at a valuation to be approved by all the members subscribing to the capital of such association, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take the acknowledgment of deeds, a statement in writing, in which shall be set forth the full names of such persons and the amount of capital * * * ."

"31. *Liability of individual members for judgments and debts of association; execution against members; unpaid subscriptions.*—Sec. 2. That the members of any such partnership association shall not be liable under any judgment, decree or order which shall be obtained against any such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided; that is to say, if any execution, sequestration or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereof whereon to levy or enforce such execution, sequestration or other process, then such execution, sequestration or other process may be issued against any of the members to the extent of the portions of their sub-

scriptions respectively, in the capital of the association not then paid up; provided always, that no such execution shall issue against any member, except upon an order of court or of a judge of the court in which the action, suit or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof, and the amount of capital remaining to be paid upon their respective subscriptions, and from them, or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription list book for that purpose, and the same shall be open to inspection by the creditors and members of the association at all reasonable times."

"38. *Association may sue and be sued; service of process.* Sec. 9. That said association shall sue and be sued in their association name; and when suit is brought against any such association, service thereof shall be made upon the chairman, secretary or treasurer thereof, which service shall be as complete and effective as if made upon each and every member of such association."

"39. *Association may adopt and use common seal; acknowledgments.* Sec. 10. That whenever any association formed under the act to which this is a supplement shall have occasion to execute any deed of conveyance, or bonds with or without coupons, and mortgages, to secure, purchase or borrow moneys, such association shall have a right to adopt and use a common seal, and to acknowledge such instruments or writings by their chairman and secretary."

"40. *Association empowered to hold real estate.* Sec. 1. That any partnership association, formed or to be formed under the act to which this is a supplement, shall have power to purchase and hold real estate and dispose of the same in fee-

simple, or for a less estate, the title thereof to be in the name adopted by such association, and shall be as valid and effectual in law or equity as if the same were held in the individual names of the partners of said association, and every deed or conveyance of the same and every mortgage for purchase or borrowed moneys, shall be made in the name adopted by said association, and executed in the same manner as set forth in section ten of the act to which this is a supplement."

MICHIGAN:

Partnership Associations. Act No. 191 of 1877, —"An Act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances"; Compiled Laws of Michigan of 1929, Chap. 193, "Partnership Associations"; Sections 9909-9928.

"9909. *Partnership association; formation; capital stock; articles, contents, recording.* Section 1. When any three (3) or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere, whose principal office or place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take acknowledgments of deeds, a statement in writing, or articles of association, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed for by each; the total amount of capital, and * * * ."

"9910. *Same; liability of members; labor debts.* Sec. 2. The members of any such partnership association shall not be liable under any judgment, decree, or order which shall be ob-

tained against such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided, that is to say: if any execution or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereof whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the members to the extent of the portions of their subscriptions respectively, in the capital of the association not then paid up: *Provided always,* That no such execution shall issue against any member, except upon an order of court or of a judge of the court in which the action, suit, or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof, and the amount of capital remaining to be paid upon their respective subscriptions, and from them or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription list book for that purpose and the same shall be open to inspection by the creditors and members of the association, at all reasonable times; *Provided,* That nothing herein contained shall be construed to exempt the members of such partnership association from individual liability for all labor performed for the association."

"9914. *Division of profits; impairment of capital.* Sec. 6. The association may, from time to time, divide the profits of its business in such manner and in such an amount as a majority of its managers may determine, which profits so divided shall not at the time diminish or impair the capital of the said association; and any one consenting to a dividend which shall diminish or impair the capital, shall be liable to

any person or persons interested or injured thereby to the amount of such diminution or impairment."

"9918. *Real estate, ownership and conveyance; service of process.* Sec. 10. All the real estate owned or purchased by any association, created under and by virtue of this fact, shall be held and owned and conveyance thereof shall be made in the association name; said association shall sue and be sued in their association name; and when suit is brought against any such association, service of process and other papers in such suit prior to appearance therein by defendant, shall be made upon the chairman, secretary or treasurer thereof: *Provided,* If no such officer reside in the county where the principal office or place or (of) business or (of) such association is located, or no such officer be found in such county within five (5) days after the commencement of such suit, service of such process and papers may be made upon such association by service thereof upon any clerk, agent or attorney thereof in its office or place of business named in its articles of incorporation, which service shall be as complete and effective as if made upon each and every member of such association."